IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Revn. No.1270 of 2007
Date of Decision : September 25, 2007.

Dalbir Singh .... Petitioner

Vs.

State of Punjab .... Respondent

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr.J.B.S.Gill, Advocate
for the petitioner.

Mr.K.S.Pannu, AAG, Punjab.

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L.N.MITTAL, J. (Oral) :

Petitioner Dalbir Singh stands convicted under Section 7 read with Section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (in short – the Act) and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month, vide judgment and order dated 22.09.2004 of learned Sub Divisional Judicial Magistrate, Dasuya, as affirmed in appeal vide judgment dated 13.07.2007 of learned Additional Sessions Judge, Hoshiarpur. Feeling still aggrieved, the petitioner has filed the instant revision petition.

Sample of milk was purchased from the petitioner by the Government Food Inspector and the said sample was found to be

adulterated on analysis by Public Analyst as there was deficiency of 25% milk fat and 21% milk solids not fat.

Learned counsel for the petitioner contended that in the documents, prepared by the Government Food Inspector at the spot, it was not mentioned that the sample was of buffalo milk. The argument cannot be accepted because `milk' without any prefix, is presumed to be of buffalo. In the instant case, the petitioner had not written on the containers of the milk that it was cow milk and therefore, it had to be presumed to be milk of buffalo.

It was next contended that the milk was not meant for sale. This argument is again untenable. The petitioner was carrying 40 kilograms of milk in two iron drums on his motorcycle. He did not lead any evidence in the defence that he was carrying milk for some other purpose. On the other hand, sale of milk to Government Food Inspector is also sale for the purpose of the Act.

Learned counsel for the petitioner next argued that sample of milk was taken on 11.10.1995 and the complaint was instituted on 15.03.1996 and copy of report of Public Analyst was sent to the petitioner on 29.03.1996 i.e. after delay of about six months and therefore, the petitioner was deprived of the opportunity to exercise his right to get second part of the sample analysed from Central Food Laboratory. The argument, although apparently attractive, is not acceptable. Learned State counsel submitted that formalin as preservative was added to the sample and therefore, it could be preserved for 12 months. Moreover, the petitioner, even after receiving report of Public Analyst, did not move any application to get second part of the sample analysed. Had the sample been found to be unfit for analysis, only then this plea could be available to the petitioner. The case of ***State of Punjab vs. Gian Chand*** reported as ***1991 (3) RCR (Criminal) 278***, cited by learned counsel for the petitioner, in support of his aforesaid argument, is completely distinguishable on facts. In that case, the

accused had exercised his right and second part of the sample had been sent to Cental Food Laboratory. The same was found to be not fit for analysis due to lapse of time. It was observed in the report that physical appearance of the sample showed fat separation on the surface. Moreover, in that case, the milk fat contents were found in excess of the minimum prescribed standard and the deficiency in milk solids not fat being 3% only, was held to be too insignificant. It was in these circumstances that appeal of State against acquittal was dismissed. In the instant case, however, as already noticed, the petitioner did not exercise his right to get the second sample analysed from Cental Food Laboratory and therefore, it cannot be said that the sample had become unfit for analysis due to lapse of time. Moreover, in the instant case, there is substantive deficiency of 25% milk fats and 21% milk solids not fat. Therefore, the decision of the case of ***Gian Chand (supra)*** has no applicability to the instant case.

Learned counsel for the petitioner lastly submitted that the petitioner may be released on probation or sentence be reduced to the period already undergone by the petitioner. This submission also cannot be accepted for two reasons. Firstly, the petitioner has already been awarded only minimum sentence. Secondly, the deficiency in milk fat as well as milk solids not fat was very high.

In view of the aforesaid, finding no merit in the instant revision petition, the same is hereby dismissed.

September 25, 2007 **(L.N.MITTAL)**
monika **JUDGE**